

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHARLES WILLIAMS,

Plaintiff,

vs.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:14-cv-1785-KJD-VCF

ORDER AND
REPORT & RECOMMENDATION

This matter involves Charles Williams' civil-rights action against the State of Nevada, *et al.* Before the court is Williams' application to proceed *in forma pauperis* (#1¹) and complaint (#1-1). For the reasons stated below, Williams' application to proceed *in forma pauperis* is granted and his action may proceed.

BACKGROUND

Charles Williams alleges that on November 5, 2012, Parole Officers Willis, Watford, Callaway, and Brown seized his 1999 Chevy Blazer 4X4 without a warrant while threatening Williams with violence in violation of the Fourth Amendment, various criminal laws, and the Nevada State Constitution. Now, Williams brings this action to vindicate his legal rights.

IN FORMA PAUPERIS APPLICATION

Under 28 U.S.C. § 1914(a), a filing fee is required to commence a civil action in federal court. The court may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement showing the person is unable to pay such costs. *See* 28 U.S.C. § 1915(a)(1). The standard governing *in forma pauperis* eligibility under 28 U.S.C. § 1915(a)(1) is "unable to pay such fees or give security therefor." Determination of what

¹ Parenthetical citations refer to the court's docket

1 constitutes “unable to pay” or unable to “give security therefor” and, therefore whether to allow a plaintiff
2 to proceed *in forma pauperis*, is left to the discretion of the presiding judge, based on the information
3 submitted by the plaintiff or plaintiffs. *See, e.g., Fridman v. City of New York*, 195 F. Supp. 2d 534, 536
4 (S.D.N.Y.), *aff’d*, 52 Fed. Appx. 157 (2nd Cir. 2002). Here, Plaintiff asserts in his application to proceed
5 *in forma pauperis* that he is unemployed, incarcerated, and has \$50.13 in his prison bank account.
6 Accordingly, Plaintiff’s application to proceed *in forma pauperis* is granted.

7 **LEGAL STANDARD**

8 After a court grants a plaintiff *in-forma-pauperis* status, it must review the operative complaint to
9 determine whether it is frivolous, malicious, or fails to state a plausible claim. *See* 28 U.S.C.
10 § 1915(e). This review is guided by two legal standards: Federal Rule of Civil Procedure 8 and the
11 Supreme Court’s decision in *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

12 Federal Rule of Civil Procedure 8(a) provides that a complaint “that states a claim for relief must
13 contain . . . a short and plain statement of the claim showing that the [plaintiff] is entitled to relief.” FED.
14 R. Civ. P. 8(a)(2). The Supreme Court’s decision in *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) states
15 that in order to satisfy Rule 8’s requirements a complaint’s allegations must cross “the line from
16 conceivable to plausible.” 556 U.S. at 680. The Court’s decisions in *Bell Atlantic Corp. v. Twombly*, 550
17 U.S. 544, 556 (2007) and *Iqbal* prescribe a two-step procedure for determining whether a complaint’s
18 allegations cross that line.

19 First, the court must identify “the allegations in the complaint that are not entitled to the assumption
20 of truth.” *Iqbal*, 556 U.S. at 679, 680. Factual allegations are not entitled to the assumption of truth if they
21 are “merely consistent with liability,” *id.* at 678, or “amount to nothing more than a ‘formulaic recitation
22 of the elements’ of a constitutional” claim. *Id.* at 681.
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1 Second, the court must determine whether the complaint states a “plausible” claim for relief. *Id.* at
 2 679. A claim is “plausible” if the factual allegations, which are accepted as true, “allow[] the court to draw
 3 the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. This inquiry
 4 is “a context-specific task that requires the reviewing court to draw on its judicial experience and common
 5 sense.” *Id.* at 679 (citation omitted).

6 If the factual allegation, which are accepted as true, “do not permit the court to infer more than the
 7 mere possibility of misconduct, the complaint has alleged—but it has not “show[n]”—“that the pleader is
 8 entitled to relief.” *Id.* (citing FED. R. CIV. P. 8(a)(2)).

9 However, where a *pro se* litigant is involved, courts are directed to hold the litigant to “less
 10 stringent standards.” *See Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Hughes v. Rowe*, 449 U.S. 5, 10 n.
 11 7 (1980). “Such litigants often lack the resources and freedom necessary to comply with the technical
 12 rules of modern litigation.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–45 (3d Cir. 2013) (citing
 13 *Moore v. Florida*, 703 F.2d 516, 520 (11th Cir. 1983)).

14 If the court dismisses a complaint under section 1915(e), the plaintiff should be given leave to
 15 amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the
 16 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103,
 17 1106 (9th Cir. 1995) (citation omitted).

18 DISCUSSION

19 42 U.S.C. § 1983 provides, “[e]very person who, under color of any statute, ordinance, regulation,
 20 custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected,
 21 any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any
 22 rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured
 23 in an action at law, suit in equity, or other proper proceeding for redress.” Section 1983 “is not itself a
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1 source of substantive rights, but merely provides a method for vindicating federal rights elsewhere
2 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137,
3 144 n.3 (1979)). “Traditionally, the requirements for relief under [§] 1983 have been articulated as: (1) a
4 violation of rights protected by the Constitution or created by federal statute, (2) proximately caused
5 (3) by conduct of a ‘person’ (4) acting under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420
6 (9th Cir. 1991).

7 Williams’ complaint satisfies these elements with one exception. He alleges that Parole Officers
8 Willis, Watford, Callaway, and Brown seized his 1999 Chevy Blazer 4X4 without a warrant while
9 threatening Williams with violence. Although these allegations are not detailed, they are sufficient to cross
10 “the line from conceivable to plausible.” *Iqbal*, 556 U.S. at 680. The one exception: the State of Nevada
11 is not a “person” for purpose of section 1983. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 69
12 (1997). Therefore, Williams’ action may proceed; but, the court recommends dismissing the State of
13 Nevada with prejudice.

14
15 ACCORDINGLY, and for good cause shown,

16 IT IS ORDERED that Plaintiff’s Applications to Proceed *In Forma Pauperis* (#1) is GRANTED.

17 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain the action to conclusion
18 without the necessity of prepayment of any additional fees, costs, or security. This order granting *in forma*
19 *pauperis* status does not extend to the issuance of subpoenas at government expense.

20 IT IS FURTHER ORDERED that the Clerk of Court file the complaint, issue summons to the
21 Defendants named in the complaint, deliver the same to the U.S. Marshal for service, and send blank
22 copies of the USM-285 forms to the Plaintiff.

23 IT IS FURTHER ORDERED that the plaintiff shall have twenty (20) days to furnish to the U.S.
24 Marshal the required USM-285 forms. Within twenty (20) days after plaintiff receives copies of the
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1 completed USM-285 forms from the U.S. Marshal, plaintiff must file a notice with the court identifying
2 which defendants were served and which were not served, if any. If the plaintiff wishes to have the U.S.
3 Marshal attempt service again on any unserved defendants, then a motion must be filed with the court
4 identifying the unserved defendants, specifying a more detailed name and address, and indicating whether
5 some other manner of service should be used. Pursuant to the Federal Rules of Civil Procedure Rule 4(m),
6 service must be accomplished within one hundred twenty (120) days from the date that the complaint was
7 filed.

8 IT IS FURTHER ORDERED that from this point forward, plaintiff will serve upon defendants, or
9 their attorney if they have retained one, a copy of every pleading, motion, or other document submitted
10 for consideration by the court. Plaintiff shall include with the original paper submitted for filing a
11 certificate stating the date that a true and correct copy of the document was mailed to the defendants or
12 their counsel. The court may disregard any paper received by a district judge, magistrate judge, or the
13 Clerk which fails to include a certificate of service.

14 IT IS RECOMMENDED that the State of Nevada be DISMISSED WITH PREJUDICE.

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16 **NOTICE**

17 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
18 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
19 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
20 may determine that an appeal has been waived due to the failure to file objections within the specified
21 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections
22 within the specified time and (2) failure to properly address and brief the objectionable issues waives the
23 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.
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1 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,
2 454 (9th Cir. 1983).

3 Pursuant to Local Special Rule 2-2, the Plaintiff must immediately file written notification with
4 the court of any change of address. The notification must include proof of service upon each opposing
5 party of the party's attorney. **Failure to comply with this Rule may result in dismissal of the action.**
6 *See* LSR 2-2.

7 IT IS SO ORDERED.

8 DATED this 2nd day of January, 2015.

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11 CAM FERENBACH
12 UNITED STATES MAGISTRATE JUDGE
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